burden of proof . . . or which might lead him not to hold the balance nice, clear and true . . .'" (*Id.* at p. 282, quoting *Tumey, supra*, 532 [47 S.Ct. 437, 444], and *Ward, supra*, 60 [93 S.Ct. 80, 83].)

Additionally, the California state court rulings in the instant case are contrary to another recent California Appellate Court ruling, *Yaqub, M.D. v. Valley Memorial Healthcare System*, (2004) 122 Cal.App.4th, 18 Cal.Rptr. 3d 780. In *Yaqub*, the court of appeal, Sixth Appellate District, held that a hearing officer with a direct, substantial, personal and pecuniary interest in the proceeding was *disqualified* from presiding over the administrative hearing to decide whether the physician's hospital privileges would be revoked.[4] The *Yaqub* decision followed U.S. Supreme Court precedent, citing *Haas v. County of San Bernardino* (2002) 27 Cal.App.4th 1017, 119 Cal.Rptr.2d 341, which cited *Tumey* and *Ward, supra.*

However, in the *instant* case, the California Supreme Court ignored the ruling in *Yaqub* and the guarantees of the U.S. Constitution and the U.S. Supreme Court precedent on the issue at hand. The California Supreme Court refused to grant review to reconsider the lower courts' (Second Appellate District) rulings that *permitted* an arbitrator with an obvious direct, substantial, personal and pecuniary interest in the proceeding to decide whether Petitioner's hospital privileges would be revoked.

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[4] As in *Yaqub*, the hearing officer in the instant case had an additional interest in the outcome of the proceeding. The arbitrator is an attorney who represents hospitals and who is employed by hospitals as a hearing officer, thereby increasing his risk for bias in ruling for the hospital. (See Petitioner's Petition for Writ of Certiorari p. 14 and Reply p. 9).

In permitting an adjudicator with a "direct, personal, substantial, and pecuniary interest" to rule on whether Petitioner would be deprived of his property and liberty rights, the California state courts acted contrary to the U.S. Constitutional *guarantee* that no state shall deprive a citizen of property or liberty without the due process of law, and contrary to U.S. Supreme Court Precedent and Federal law on this specific issue.

When the U.S. Supreme Court directly speaks on a specific issue and, through its well-settled precedent, emphatically decides it a U.S. Constitutional violation, a state court should not be allowed to rule to the contrary.

CONCLUSION

For the reasons set forth above, and for the reason of such controlling and substantial grounds not previously presented, namely the controlling effect of the U.S. Constitution and U.S. Supreme Court precedent over the state courts' contrary decisions on federal issues, Petitioner requests that the U.S. Supreme Court accept and grant this Petition for Rehearing.

Dated: October 26, 2005

Respectfully submitted,
/s/ Robert J. Jaffe, M.D.
ROBERT J. JAFFE, M.D.
Petitioner in Pro Se

CERTIFICATION

I, Robert J. Jaffe, M.D., Petitioner in *pro se*, hereby certify that the grounds for this Petition for Rehearing is limited to the grounds specified in U.S. Supreme Court Rule 44, "intervening circumstances of a substantial or controlling effect not previously presented", namely the controlling effect of the U.S. Constitution on the issue at hand, and the controlling effect of the U.S. Supreme Court's precedent on the issue at hand.

I, Robert J. Jaffe, M.D., hereby further certify that this Petition for Rehearing is presented in good faith and not for the purpose of delay.

DATED: October 25, 2005

ROBERT J. JAFFE, M.D.
Petitioner in Pro Se